



JOHN ENGLER, Governor

DEPARTMENT OF MANAGEMENT & BUDGET

P.O. BOX 30026, LANSING, MICHIGAN 48909

PATRICIA A. WOODWORTH, Director

OFFICE OF ADMINISTRATIVE SERVICES
ADVISORY MEMORANDUM No. 93-5

Date: August 2, 1993

TO: All Bureaus and Offices
SUBJECT: Family and Medical Leave Act (FMLA)

The recently enacted federal Family and Medical Leave Act (FMLA) requires all public employers and private sector employers of fifty or more employees to provide up to 12 weeks of unpaid, job-protected leave in a 12 month period to care for newborn, adopted or foster children in the first 12 months after birth or placement; to care for a seriously ill child, spouse, or parent; or for the employee's own serious health condition. Although the Act refers to unpaid leave, employees may also use sick, annual, deferred and compensatory leave balances in whole or in conjunction with unpaid leave for the purposes cited.

The Act takes effect August 5, 1993, or where there is a collective bargaining agreement, upon expiration of the agreement or February 5, 1994, whichever is earlier. There are three such agreements expiring prior to February 5, 1994. The UAW agreement expires December 31, 1993 and both the AFSCME and Troopers agreements expire September 30, 1993.

As part of the Act, we are required to post a notice to employees regarding their rights under the Act. Please post the attached notice(s) in a conspicuous location at your worksite. Enclosed also is an FMLA fact sheet prepared by the U.S. Department of Labor which you may wish to review and retain for future reference. You are also reminded, as with all leaves, requests for FMLA leave must be submitted to the Personnel Division for review and approval prior to the commencement of the leave.

Distribution of Memorandum

For your convenience, two copies of this memorandum have been provided. Please retain one copy in a central file for future reference. The other copy should be forwarded to those individuals within your agency responsible for daily administration of the subject activity.

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Questions regarding this memorandum may be directed to the attention of Ann Kroneman at 37-31000.

Your cooperation and adherence to this procedural consideration will be appreciated.

A handwritten signature in dark ink, reading "William R. Buckley". The signature is written in a cursive, flowing style with a large initial "W".

William R. Buckley, Director
Office of Administrative Services

Attachments

DRAFT

JUN 2 1993

U.S. Department of Labor
Program Highlights

Fact Sheet No. ESA 93-

THE FAMILY AND MEDICAL LEAVE ACT OF 1993

The Family and Medical Leave Act of 1993 (FMLA) was enacted on February 5, 1993.

The new law is effective on August 5, 1993, for most employers. If a collective bargaining agreement (CBA) is in effect on that date, the Act becomes effective on the expiration date of the CBA or February 5, 1994, whichever is earlier.

The U.S. Department of Labor's Employment Standards Administration administers and enforces FMLA for all private, state and local government employees, and some Federal employees.

FMLA entitles eligible employees to take up to 12 weeks of unpaid, job-protected leave each year for specified family and medical reasons. An eligible employee's right to FMLA leave begins on August 5, 1993; any leave taken before that date does not count as FMLA leave.

The law contains provisions relating to employer coverage; employee eligibility for the benefits of the law; entitlement to leave, maintenance of health benefits during leave, and job restoration after leave; notice and certification of the need for FMLA leave; and, protections for employees who request or take FMLA leave. In addition, the law includes certain employer recordkeeping provisions.

EMPLOYER COVERAGE

FMLA applies to all:

- ▶ public agencies, including state, local and federal employers; and,
- ▶ private sector employers who employ 50 or more employees and who are engaged in commerce or in any industry or activity affecting commerce -- including joint employers and successors of covered employers.

EMPLOYEE ELIGIBILITY

To be eligible for FMLA benefits, an employee must:

- (1) work for a covered employer;
- (2) have worked for the employer for at least 12 months;
- (3) have worked at least 1,250 hours over the previous 12 months; and,
- (4) work at a location where at least 50 employees are employed by the employer within 75 miles.

LEAVE ENTITLEMENT

A covered employer must grant an eligible employee up to a total of 12 workweeks of unpaid leave during any 12-month period for one or more of the following reasons:

- ▶ for the birth or placement of a child for adoption or foster care;
- ▶ to care for an immediate family member (spouse, child, or parent) with a serious health condition; or,
- ▶ to take medical leave when the employee is unable to work because of a serious health condition.

Spouses employed by the same employer are jointly entitled to a combined total of 12 workweeks of family leave for the birth or placement of a child for adoption or foster care, and to care for a child or parent (but not a parent "in law") who has a serious health condition.

Leave for birth or adoption (including foster care placement) must conclude within 12 months of the birth or placement.

Under some circumstances, employees may take FMLA leave intermittently -- which means taking leave in blocks of time, or by reducing their normal weekly or daily work schedule.

- ▶ Where FMLA leave is for birth or placement for adoption or foster care, use of intermittent leave is subject to the employer's approval.
- ▶ FMLA leave may be taken intermittently whenever it is medically

necessary to care for a seriously ill family member, or because the employee is seriously ill and unable to work.

Also, subject to certain conditions, employees or employers may choose to use accrued paid leave (such as sick or vacation leave) to cover some or all of the FMLA leave. The employer is responsible for designating if paid leave used by an employee counts as FMLA leave, based on information provided by the employee. In no case can an employee's paid leave be credited as FMLA leave after the leave has been completed.

"Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves:

- ▶ any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility;
- ▶ any period of incapacity requiring absence of more than three calendar days from work, school, or other regular daily activities that also involves continuing treatment by (or under the supervision of) a health care provider; or,
- ▶ continuing treatment by (or under the supervision of) a health care provider for a chronic or long-term health condition that is incurable or so serious that, if not treated, would likely result in a period of incapacity of more than three calendar days, and for prenatal care.

MAINTENANCE OF HEALTH BENEFITS

A covered employer is required to maintain group health insurance coverage for an employee on FMLA leave whenever such insurance was provided before the leave was taken and on the same terms as if the employee had continued to work. Where appropriate, arrangements will need to be made for employees to pay their share of health insurance premiums while on leave.

In some instances, the employer may recover premiums it paid to maintain health insurance coverage for an employee who fails to return to work from FMLA leave.

JOB RESTORATION

Upon return from FMLA leave, an employee must be restored to his or her original job, or to an equivalent job with equivalent pay, benefits, and other employment terms and conditions.

In addition, an employee's use of FMLA leave cannot result in the loss of any employment benefit that the employee earned or was entitled to before using FMLA leave.

Under specified and limited circumstances, the employer may refuse to reinstate certain highly-paid "key" employees after using FMLA leave. In order to do so, the employer must:

- ▶ notify the employee of his/her status as a "key" employee in response to the employee's notice of intent to take FMLA leave;

- ▶ notify the employee as soon as the employer decides to deny job restoration and explain the reasons for this decision; and,
- ▶ offer the employee a reasonable opportunity to return to work from FMLA leave after giving this notice.

A "key" employee is a salaried "eligible" employee who is among the highest paid ten percent of employees within 75 miles of the work site.

NOTICE AND CERTIFICATION

Employees seeking to use FMLA leave may be required to provide:

- ▶ 30-day advance notice of the need to take FMLA leave when the need is foreseeable;
- ▶ medical certifications supporting the need for leave due to a serious health condition affecting the employee or an immediate family member;
- ▶ second or third medical opinions and periodic recertifications (at the employer's expense); and,
- ▶ periodic reports during FMLA leave regarding the employee's status and intent to return to work.

When leave is needed to care for an immediate family member or the employee's own illness, and is for planned medical treatment, the employee must schedule treatment so that it will not unduly disrupt the employer's operation.

Covered employers must post a notice approved by the Secretary of Labor explaining rights and responsibilities under FMLA. An employer that willfully violates this posting requirement may be subject to a fine of up to \$100 for each separate offense.

In addition, covered employers are obliged to provide information to their employees about their rights and responsibilities under FMLA, including specific information (in response to an employee's notice of the need for FMLA leave) regarding just what will be required of the employee and what might happen in certain circumstances, such as if the employee fails to return to work from FMLA leave.

UNLAWFUL ACTS

FMLA makes it unlawful for any employer to interfere with, restrain, or deny the exercise of any right provided by this law. It is also unlawful for an employer to discharge or discriminate against any individual for opposing any practice, or because of involvement in any proceeding, related to FMLA.

ENFORCEMENT

FMLA will be enforced by the U.S. Labor Department's Employment Standards Administration. This agency will investigate complaints of violations. If violations cannot be satisfactorily resolved, the Secretary may bring action in court to compel compliance.

An eligible employee may bring a private civil action against an employer for violations.

OTHER PROVISIONS

Special rules apply to employees of local education agencies. Generally, these rules provide for FMLA leave to be taken in blocks of time when the leave is needed near the end of a school term.

Salaried executive, administrative, and professional employees of covered employers who meet the Fair Labor Standards Act (FLSA) criteria for exemption from minimum wage and overtime under Regulations, 29 CFR Part 541, do not lose their FLSA-exempt status by using any unpaid, FMLA leave. This special exception to the "salary basis" requirements for FLSA's exemption extends only to "eligible" employees' use of leave required by FMLA.

The FMLA does not affect any other Federal or State law which prohibits discrimination. It does not supersede any State or local law which provides greater family or medical leave protection. Nor does it affect an employer's obligation to provide greater leave rights under a collective bargaining agreement or employment benefit plan.

The FMLA also encourages employers to provide more generous leave rights.

For more information, please contact the nearest office of the **Wage and Hour Division**, listed in most telephone directories under U.S. Government, Department of Labor, Employment Standards Administration.

Your Rights

Under The

Family and Medical Leave Act of 1993

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to "eligible" employees for certain family and medical reasons.

Employees are eligible if they have worked for a covered employer for at least one year, and for 1,250 hours over the previous 12 months, and if there are at least 50 employees within 75 miles.

Reasons For Taking Leave:

Unpaid leave must be granted for *any* of the following reasons:

- to care for the employee's child after birth, or placement for adoption or foster care;
- to care for the employee's spouse, son or daughter, or parent, who has a serious health condition; or
- for a serious health condition that makes the employee unable to perform the employee's job.

At the employee's or employer's option, certain kinds of *paid* leave may be substituted for unpaid leave.

Advance Notice and Medical Certification:

The employee may be required to provide advance leave notice and medical certification. Taking of leave may be denied if requirements are not met.

- The employee ordinarily must provide 30 days advance notice when the leave is "foreseeable."
- An employer may require medical certification to support a request for leave because of a serious health condition, and may require second or third opinions (at the employer's expense) and a fitness for duty report to return to work.

Job Benefits and Protection:

- For the duration of FMLA leave, the employer must maintain the employee's health coverage under any "group health plan."

- Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.
- The use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

Unlawful Acts By Employers:

FMLA makes it unlawful for any employer to:

- interfere with, restrain, or deny the exercise of any right provided under FMLA;
- discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

Enforcement:

- The U.S. Department of Labor is authorized to investigate and resolve complaints of violations.
- An eligible employee may bring a civil action against an employer for violations.

FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

For Additional Information:

Contact the nearest office of the Wage and Hour Division, listed in most telephone directories under U.S. Government, Department of Labor.



U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210

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